STATE OF IOWA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

NORTH CENTRAL COMMUNITY SCHOOL DISTRICT, PUBLIC EMPLOYER and NORTH CENTRAL EDUCATION ASSOCIATION-ISEA, CERTIFIED EMPLOYEE ORGANIZATION	CASE NOS. 4251 & 4262

PROPOSED DECISION AND ORDER

Charles E. Boldt, Administrative Law Judge. Pursuant to petitions filed under Section 13 of the Public Employment Relations Act [Act], Chapter 20, IOWA CODE (1989) and Rule 4.7 (Case No. 4251) and Rule 4.6 (Case No. 4262) of the Rules of the Public Employment Relations Board [Board or PERB], a hearing was held before me on September 12, 1990. The North Central Education Association-ISEA [Association] was represented by Charles E. Gribble and the North Central Community School District [District] was represented by Brian L. Gruhn. The parties had full opportunity to present evidence and arguments at hearing. The record was held open for receipt of additional evidence. Upon receipt of that evidence and no objections having been filed, the record was closed on October 4, 1990. Both representatives filed post-hearing briefs on October 26, 1990.

Statement of the Cases

The Association filed a petition in Case No. 4251 on June 21, 1990 seeking clarification of the professional employee bargaining unit represented by the Association. In its petition, the Association alleges that four employees with the job title of teacher associate are, on the basis of their duties, responsibility and certification, classroom teachers. The Association requests PERB to clarify whether those employees identified as teacher associates are included under the job classification of classroom teachers.

The District filed its answer to the petition on July 19, 1990 in which it denies that the employees in question meet the duties and responsibilities and "states that these teachers should not be classified as classroom teachers." Additionally, the District sought dismissal of the petition for unit clarification.

The Association filed a petition in Case No. 4262 on July 27, 1990 seeking to amend the professional employee bargaining unit represented by the Association by removing the job classification of teacher associate from the included section of the unit description and reiterated the allegation that teacher associates "are, in fact, classroom teachers." Additionally, the Association submitted a request for consolidation of Case Nos. 4251 and 4262 on July 27, 1990.

On August 15, 1990 the District filed an answer to the request to consolidate in which it consented to consolidation of the cases.

An Order Granting Consolidation of Case Nos. 4251 and 4262 was issued by this Administrative Law Judge [ALJ] on August 16, 1990.

The District filed a motion to dismiss each of the petitions on September 7, 1990. The motion to dismiss in Case No. 4262 was withdrawn at hearing and will not be addressed further. The motion to dismiss the clarification of unit petition in Case No. 4251 was reiterated at hearing and alleges that the petition for unit clarification is inappropriate since both classroom teachers and teacher associates are in the bargaining unit. Ruling on the motion to dismiss in Case No. 4251 was deferred to this Proposed Decision and Order.

Based on the entire record in these cases, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT[1]

The Association filed a combined petition for unit determination and representative certification on November 14, 1989. The parties filed a stipulation of bargaining unit on December 13, 1989, which describes the unit as follows:

> INCLUDED: All professional employees of the District including classroom teachers, librarians, counselors, coaches, federal program instructors, athletic director, media specialists and teacher associates.

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[1]At hearing the parties were apprised of the intent of this ALJ to take official notice of documentation contained in the case file for PERB Case No. 4110, the case which originally formed this bargaining unit and certified North Central Education Association-ISEA as the representative. Such notice is taken pursuant to Section 17A.14(4) IOWA CODE (1989). No objection was made by either party.

> EXCLUDED: The superintendent, principals, all non-professional employees and all others excluded by Section 4 of the Act.

Following the requisite posting of a Public Notice of Proposed Decision, the unit described above was determined by the Board to be appropriate for the purposes of collective bargaining within the meaning of Section 13.2 of the Act. Section 13.2 states in relevant part:

> In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of employee organization, geographical location and the recommendations of the parties involved.

An election was ordered and conducted and the Association was certified as the representative for the above-described bargaining unit on January 19, 1990. As of the date of hearing, no collective bargaining had yet transpired between the Association and the District.

At issue in both petitions is the job classification of teacher associate. Currently there are four employees that share this classification. The four employees are: Linda Howe, Joyce LaKose, Elizabeth Woythal and Karen Dadisman. Each employee is contracted with the District for at least a portion of their work day as a teacher associate.

Linda Howe is contracted with the District[2] as Teacher Associate - Title I Program for 188 days. The 188 days are divided by contract into 180 teaching days + 5 In-Service days + 3 holidays. The contracted work day is 7 hours and the work year is 9 calendar months. Also in the employee contract are provisions for health insurance, income protection insurance, sick leave, personal days and holidays.

The health insurance provision provides for employer paid health insurance for the employee or one-half employer paid health insurance if the employee elects family coverage. The employer's contribution is for 9 months with the employee responsible for premium payment during the summer months. If the employee drops health insurance coverage during the summer months, the employee is precluded from rejoining the health insurance plan provided by the District.

Income protection insurance, the specifications of which are not in the record, is to be provided by the District. Sick leave is paid in accordance with Board policy.[3] Two personal days per year are allowed and to be deducted from allowable sick leave. The contract also provides for three paid holidays.

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[2]Association Exhibit 2. While this Exhibit is a contract for the 1989-90 school year, the provisions, except for pay, are identical to the contract for the 1990-91 school year according to uncontested testimony by Howe.

[3]Association Exhibit 3. Board in this circumstance refers to the Board of Education and not the Public Employment Relations Board.

This contract is a fill-in-the-blank form contract. The contract of Joyce LaKose[4] is on the same form and only name, contract year information and wage vary from Howe's contract. Both Howe and LaKose teach remedial reading in the Title I (Chapter I) program.

The contract between Elizabeth Woythal[5] and the District is for the position of Computer Teacher Associate in the Hanlontown Center. It is on a different fill-in-the-blank form which makes no reference to benefits other than "...under the same conditions as you are now employed." The contract is for 180 days a school year based on two hours per day. Woythal is a full-time employee and teaches under a three-fourths time teaching contract in the Talented and Gifted (TAG) program.

The contract between Karen Dadisman[6] and the District is on a third type of fill-in-the-blank contract form. She is contracted as part teacher aide and part teacher associate. The teacher aide portion is two hours per day and is not at issue here. The teacher associate portion of the contract is for six hours per day. The contract period is for 183 days over ten months. The 183 days are divided into "180 teaching days + 3 holidays." Dadisman's contract, while in overall different form from Howe's and LaKose's contracts, contains identical language on health insurance benefits, income protection insurance, sick leave and personal

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[4]Association Exhibit 9.

[5]Association Exhibit 7.

[6]Association Exhibit 11.

days. The holiday language is "three holidays allowed" in Dadisman's contract in lieu of "three paid holidays" in the contracts of Howe and LaKose.

Both Woythal and Dadisman teach computer skills. In addition, Dadisman teaches remedial reading and math under the guidance of other teachers as part of her teacher associate duties.

The Association went to great length to establish the community of interest extant between classroom teachers and teacher associates in the North Central Community School District through application of Board of Education policies, lines of supervision, teacher certification from the State, etc. This ALJ does not feel the need to reiterate what was uncontested at hearing, was presumably considered by the parties in their stipulation in PERB Case No. 4110, and was certainly considered by PERB in determining the appropriateness of the unit in Case No. 4110. It is sufficient to say that a substantial community of interest exists between these two job classifications.

In varying degrees, each of these four teacher associates, Howe and LaKose in Chapter I and Woythal and Dadisman in computer skills, develops their own lesson plans, determines content and style of instruction and, in general, meet the definition of teacher promulgated by Iowa's Department of Education.[7] This is further supported by the District's frequent references to these

[7]Ch. 281, Iowa Admin. Code, §12.4(8).

individuals as teachers,[8] and reference in their contracts to "teaching days."

CONCLUSIONS OF LAW

I. Motion to Dismiss, Case No. 4251

At issue in this petition is whether PERB has the authority to change employees' job classifications once they are established by the employer. While the District's motion to dismiss does not state this proposition directly, determination of this question is paramount in resolving the issues before this ALJ.

Subrule 4.7(20) of the Rules of the Board, Chapter 621 Iowa Admin. Code (1989) states in relevant part:

> A petition to clarify the inclusion or exclusion of job classifications or employees in a board determined bargaining unit may be filed by the public employer, an affected public employee or the certified employee organization. Such petition must be in the absence of a question of representation.

At the time of the filing of this petition for unit clarification, the conditions set forth in the subrule above were met.

The District argues that this petition is inappropriate under the conditions which arose when the second petition, the petition for amendment of unit in Case No. 4262, was filed. The District suggests that the ruling on the petition in Case No. 4262 will resolve the question of inclusion or exclusion of the four affected employees in the bargaining unit. The District also argues that the questions raised in the requested remedy of the Association in

[8]The District refers to these individuals as teachers in their pleadings of the cases and Association Exhibit 12.

the petition should be more appropriately addressed in collective bargaining between the parties.

In support of the District's argument, the District cites prior PERB caselaw.[9] At the core of this citation is PERB's determination that "if that (unit) description itself unambiguously resolves the question, the inquiry is concluded."[10]

The Association argues that only PERB can make the determination the Association seeks, not an interest arbitrator. The Association alleges that this case is "nearly identical to" PERB case No. 3486.[11] The Association states that this Aplington decision stands for the proposition that PERB determined the media aid position at issue in that case was, in fact, a classroom teacher.

The Aplington decision does not support the proposition that PERB can or has changed employee job classifications. The issue in Aplington was not whether the media aide was, in fact, a classroom teacher. The issue was whether the position of media aide was, in fact, a professional classification and therefore appropriately included in a professional bargaining unit. The Order in that decision clearly sets forth: "...I find that the elementary media center position, ...to be a professional position, and therefore a

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[9]Cedar Rapids Community School District, 86 PERB 2815 & 2818; Eastern Iowa Community College, 82 PERB 2110; and Andrew Education Association, 84 H.O. 2667.

[10]Eastern Iowa Community College Higher Education Association, 82 PERB 2110.

[11]Aplington Education Association, 87 H.O. 3486.

position included in the bargaining unit represented by the Association" [emphasis added].[12]

"Job classifications" is a mandatory subject of bargaining pursuant to Section 9 of the Act.[13] As such, the parties may bargain whether the incumbents in the teacher association position are appropriately classified. There is no prior caselaw from which this ALJ may draw the conclusion that PERB has ever exercised authority to impose job classifications on the parties.

Based on the foregoing, I conclude that the petition for unit clarification in PERB Case No. 4251 is not a proper vehicle to achieve the aims the Association seeks and should be dismissed in its entirety.

II. PERB Case No. 4262

The issue in this case parallels the issue in Case No. 4251. The Association, by amending teacher associates out of the bargaining unit, seeks to generate ambiguity in the unit description to lend viability to the petition for unit clarification. With the dismissal of the petition in Case No. 4251, this need no longer exists.

The position of the District on this issue can best be described as apathetic. While the District declined to offer resistance to this petition, they also declined to stipulate to the

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[12]Id., at 13.

[13]Section 20.9, Chapter 20, IOWA CODE (1989).

removal of teacher associates from the unit determined by the Board in Case No. 4110.

In reviewing the criteria of Section 20.13 of the Act, the community of interest has been established and considered in the former determination of the unit as has the efficient administration of government. Since this is a new unit which has not bargained, the history and extent of employee organization is very brief and not determinative of the outcome of this case. Similarly, the geographical location has not changed since the Board determined the appropriateness of the unit as described in Case No. 4110, and does not merit consideration for changing the previously determined unit.

What remains then, is the recommendations of the parties involved. The District, through the testimony of Superintendent Connell, is apathetic toward the inclusion or exclusion of teacher associates in the professional bargaining unit. This apathy was expressed in their stipulation to inclusion in December, 1989. Less than one year later, that apathy continues in the lack of resistance to the petition to amend teacher associates out of the unit.

The Association's motive for filing this petition rests in their requested remedy which will not be granted by this ALJ for lack of demonstrable authority to take the action requested. The incumbents in this job classification testified that they did not wish to continue in the bargaining unit <u>as teacher associates</u>. A reasonable person cannot review the pleadings and testimony and

conclude that the teacher associates recommend their removal from representation by the Association. Instead, these employees seek improvement in their wages, hours, and other conditions of employment. Change in these areas is through the collective bargaining process.

I conclude that the unit previously determined in PERB Case No. 4110 is appropriate for purposes of collective bargaining within the meaning of Section 13.2 of the Act, and the petition to amend that unit in PERB Case No. 4262 should be dismissed in its entirety.

I therefore issue the following:

ORDER

The petition for clarification of bargaining unit in PERB Case No. 4251 should be, and hereby is, dismissed in its entirety. The petition for amendment of bargaining unit in PERB Case No. 4262 should be, and hereby is, dismissed in its entirety.

DATED at Des Moines, Iowa this 30th day of November, 1990.

Charles E. Boldt

CHARLES E. BOLDT
ADMINISTRATIVE LAW JUDGE